

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ANGEL DONE,

Plaintiff,

— against —

WELLS FARGO BANK, N.A., as Trustee for
Option One Mortgage Loan Trust 2004-3 Asset-
Backed Certificates, Series 2004-3,

Defendant.
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**ORDER ADOPTING REPORT
AND RECOMMENDATION**
08-CV-3040 (JFB) (ETB)

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ SEP 14 2009 ★

JOSEPH F. BIANCO, District Judge:

On July 25, 2008, *pro se* plaintiff filed the complaint in this action against defendant Wells Fargo Bank, N.A., as Trustee for Option One Mortgage Loan Trust 2004-3 Asset-Backed Certificates, Series 2004-3 ("defendant") and, on July 30, 2009, plaintiff filed an amended complaint against defendant, moving by an order to show cause for preliminary injunction and temporary restraining order, which was denied on July 31, 2009. On September 12, 2008, plaintiff again moved by order to show cause for preliminary injunction and temporary restraining order, which was denied on September 16, 2008.

By letter dated December 4, 2008, defendant requested a pre-motion conference in anticipation of filing a motion to dismiss the amended complaint. Defendant then moved on January 8, 2009 to dismiss the complaint. Plaintiff responded in opposition on February 27,

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2009,¹ and defendant submitted a reply on March 13, 2009. By Order dated May 19, 2009, the Court referred the motion to Magistrate Judge E. Thomas Boyle for a report and recommendation.

On August 7, 2009, Magistrate Judge Boyle issued a Report and Recommendation (the "R&R"), recommending that this action be dismissed in its entirety. The R&R further instructed that any objections to the R&R be submitted within ten (10) days of receipt. (See Report and Recommendation dated August 7, 2009, at 15.) As indicated by the docket sheet, a copy of the R&R was mailed to plaintiff on August 7, 2009. (See docket entry [30].) No objections have been filed to date, although the date for filing any objections has expired.

A district judge may accept, reject, or modify, in whole or in part, the findings and recommendations of the Magistrate Judge. See *DeLuca v. Lord*, 858 F. Supp. 1330, 1345 (S.D.N.Y. 1994); *Walker v. Hood*, 679 F. Supp. 372, 374 (S.D.N.Y. 1988). As to those portions of a report to which no "specific written objections" are made, the Court may accept the findings contained therein, as long as the factual and legal bases supporting the findings are not clearly erroneous. See Fed. R. Civ. P. 72(b); *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *Greene v. WCI Holdings Corp.*, 956 F. Supp. 509, 513 (S.D.N.Y. 1997).

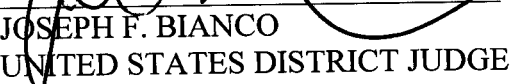
Having conducted a review of the full record and the applicable law, and having reviewed the R&R for clear error, the Court adopts the findings and recommendations contained in the R&R in their entirety. Even under a *de novo* standard, the Court adopts the R&R in its entirety. Accordingly,

IT IS HEREBY ORDERED that defendant's motion to dismiss the complaint is

¹ The Court liberally construes *pro se* plaintiff's submission entitled "Affidavit of Negative Averment, Opportunity to Cure, and Counterclaim" as plaintiff's opposition to defendant's motion, as did Magistrate Judge Boyle.

GRANTED in its entirety. The Clerk of the Court shall enter judgment accordingly and close this case. A copy of this Order has been mailed to *pro se* plaintiff.

SO ORDERED.


JOSEPH F. BIANCO
UNITED STATES DISTRICT JUDGE

Dated: September 14, 2009
Central Islip, New York